

[NOTE: Each PPA request is evaluated on its own merits. The full text of recent prospective purchaser agreements is provided for information purposes only. The Model Prospective Purchaser Agreement will serve as a starting point for structuring future agreements.]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF: SOLITRON DEVICES SUPERFUND SITE

EPA Docket #: 99-38-C

UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE THE NATIONAL
RESPONSE, COMPENSATION, AND)	LAND COMPANY
LIABILITY ACT OF 1980, 42 U.S.C.)	
Section 9601, et seq., as amended.)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue (Agreement) is made and entered into by and between the United States, on behalf of the United States Environmental Protection Agency (EPA), and the National Land Company (Settling Respondent) (collectively the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

The Solitron Devices Superfund Site (Site) is located at 1177 Blue Heron Blvd, Riviera Beach, Palm Beach County, Florida and is the subject of this Agreement. The Settling Respondent is a Florida corporation, whose address is c/o Kent Huffman, Esq., 223 Sunset Avenue, Suite 130, Palm Beach, Florida 33480. The Settling Respondent proposes to renovate the existing structure on the Site and lease warehouse, storage, and office space to area businesses and local government.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling

Respondent for the Existing Contamination at the Site which would otherwise result from Settling Respondent becoming the owner of the Site.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
2. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Agreement.
3. "Parties" shall mean the United States on behalf of EPA, and the Settling Respondent.
4. "Settling Respondent" shall mean the National Land Company, Inc.
5. "Site" shall mean the Solitron Devices Superfund Site, encompassing approximately 8 acres, located at 1177 Blue Heron Blvd, Riviera Beach, Palm Beach County, Florida, which is described in Exhibit 1 and depicted generally on the map attached as Exhibit 2. The Site shall include all areas to which hazardous substances and/or pollutants or contaminants, have come to be located.
6. "Consideration" shall mean the benefit received by EPA from the Settling Respondent in exchange for the United States' Covenant Not to Sue under this Agreement.
7. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

8. Contamination at the Site is a result of the electronics manufacturing processes that occurred under the ownership of both Honeywell Inc. (Honeywell) and Solitron Devices, Inc. (Solitron). Recent investigations have determined that contamination is emanating primarily from the area beneath the north building which fronts Blue Heron Blvd. It has not yet been determined

if remediation of the Site requires this structure to be dismantled.

The results of a field investigation indicate elevated concentrations of several contaminants which may be attributable to past Site activities. Contaminants detected in groundwater above background concentrations included chlorobenzene, trichloroethene and its break down constituents including 1,2-dichloroethene (total) and vinyl chloride, ethyl benzene, toluene, xylene (total), 1,2-dichlorobenzene, 1,4-dichlorobenzene, 2,4-dichlorophenol, aluminum, arsenic, chromium, nickel, sodium, vanadium, zinc, and cyanide. Elevated concentrations of semi-volatile organics, pesticides, and inorganics were also detected in the surface and subsurface soil samples. Elevated concentrations of pesticides and inorganics were noted in sediments. Several of the contaminants detected in groundwater are known or suspected carcinogens. Others are known to have non-carcinogenic health effects. Contaminants detected in the surficial aquifer and in the public water supply are the same type of contaminants as those present at the Site. Contaminants found in the public water supply include vinyl chloride and 1,1 dichloroethene. The City of Riviera Beach is currently performing end user treatment of the groundwater at the Riviera Beach well fields.

A National Priorities List package is complete, but the Site has not been listed. Honeywell, as a previous owner/operator, has signed an Administrative Order on Consent (AOC), agreeing to perform a feasibility study with respect to the contamination at the Site. Solitron is the current owner of the Site and is a party to the AOC for access purposes.

9. The Settling Respondent represents, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondent has had no prior involvement with the Site. Settling Respondent has investigated the Site for redevelopment suitability and is aware of the contamination at the Site.

IV. PAYMENT

10. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII and Removal of Lien in Section XXII herein, Settling Respondent agrees to pay to EPA the sum of \$ 419,000, within thirty (30) days of the effective date of this Agreement. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing EPA Region 4, EPA Docket number, and Site/Spill ID# A484, and name and address of Settling Respondent. The payment shall be sent to U.S. EPA Region 4, Attention: Superfund Accounting at PO Box 100142, Atlanta, GA 30384. Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions).

11. Amounts due and owing pursuant to the terms of this Agreement, but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

12. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA and its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, including Honeywell, an irrevocable right of access at all times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site. The Settling Respondent agrees that EPA and Honeywell may designate and set aside an area, convenient for the implementation of response actions, for the purpose of supply and equipment storage. The Settling Respondent agrees that EPA and Honeywell may erect a fence separating this area from other portions of the Property. EPA agrees to provide notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

13. Within 30 days after the effective date of this Agreement, the Settling Respondent shall record a certified copy of this Agreement with the Recorder's Office, in Palm Beach County, State of Florida. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

14. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant) of the Agreement.

VI. DUE CARE/COOPERATION

15. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions for Existing Contamination at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA and Honeywell in the implementation of response actions at the Site and further agrees not to interfere with such response actions. The Settling Respondent

agrees not to extract groundwater at the Site without written EPA approval. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. Section 9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

16. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

17. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. Sections 9606 or 9607(a) with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

18. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors

in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

19. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

20. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondent acknowledges that it is purchasing property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

22. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the

Internal Revenue Code, 26 U.S.C. Section 9507, through CERCLA Sections 106(b)(2), 111, 112, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

23. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's or Honeywell's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. Section 9611, or 40 C.F.R. Section 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

24. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on the Settling Respondent, its officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

25. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

26. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

27. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XII. DISCLAIMER

28. This Agreement in no way constitutes a finding by EPA as to the risks to human health

and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

29. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

30. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Agreement, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the United States:

Pam Scully, Remedial Project Manager
EPA - Region 4
Waste Management Division
61 Forsyth Street
Atlanta, GA 30303

Carolyn McCall, Enforcement Project Manager
EPA - Region 4
Cost Recovery Section
61 Forsyth Street
Atlanta, GA 30303

Paula Batchelor, Cost Recovery Assistant

EPA - Region 4
Waste Management Division
61 Forsyth Street
Atlanta, GA 30303

As to Settling Respondent:

David Paladino
1528 North Lakeside Drive
Lake Worth, Florida 33460

XVI. EFFECTIVE DATE

32. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received.

XVII. TERMINATION

33. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

34. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

35. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

36. The Settling Respondent also agrees that with respect to any suit or claim for contribution

brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XIX. REDUCTION IN TAX OBLIGATION

38. In the event that a tax obligation encumbering the Property which is in effect on the effective date of this Agreement and assumed by the Settling Respondent, is reduced under any circumstances, the Settling Respondent agrees that it will pay to EPA fifty percent (50%) of any benefit in such reduction. The Settling Respondent shall notify EPA within seven (7) days of the reduction and pay this amount to EPA within thirty (30) days of the reduction, pursuant to the procedures set forth in Section IV (Payment) and Section XV (Notices and Submissions).

XX. WAIVER OF CLAIMS RELATING TO CONSIDERATION

39. Settling Respondent agrees not to assert any claims and to waive all claims, or causes of action that it may have against Honeywell relating to the Consideration addressed in this Agreement, including for contribution.

XXI. EXHIBITS

40. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

41. Exhibit 2 shall mean the map depicting the Site.

42. Exhibit 3 shall mean the copy of the lien filed on the Solitron Devices Property.

XXII. REMOVAL OF LIEN

43. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), EPA agrees to remove any lien it may have on the Site under Section 107(l) of CERCLA, 42 U.S.C. § 9607 (l), as a result of response action conducted by EPA at the Site.

XXIII. PUBLIC COMMENT

44. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

John H. Hankinson, Jr.
Regional Administrator, Region 4

Date

IT IS SO AGREED:
UNITED STATES DEPARTMENT OF JUSTICE
BY:

Assistant Attorney General
Environmental and Natural Resources Division

Date

IT IS SO AGREED:

BY:

Name

Date

Signing For:

EXHIBIT 1

Lot 1- A portion of the PLAT OF SOLITRON as recorded in Plat Book 43, Page 76, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Beginning at the Northeast corner of said PLAT OF SOLITRON a distance of 619.70 feet; thence South 0 degrees-02"-10" East along the East line of said PLAT OF SOLITRON a distance of 619.70 feet; thence South 89 degrees-57'-50" West along a line which is parallel with and 619.70 feet South of as measured at right angles to the North line of said PLAT OF SOLITRON a distance of 607.77 feet to a point on the West line of said PLAT OF SOLITRON; thence North 0 degrees-02'-10" West along said West line a distance of 619.70 feet to the Northwest corner of said PLAT OF SOLITRON; thence North 89 degrees-57'-50" East along the North line of said PLAT OF SOLITRON a distance of 607.77 feet to the Point of Beginning of this description.

EXHIBIT 2

EXHIBIT 3